87-1181

Supreme Court, U.S.
FILED
DEC 31 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

LARRY DEAN GAYTON,
Petitioner,

versus

THE STATE OF GEORGIA,
Respondent.

SUPPLEMENTAL APPENDIX

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January 8, 1988

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August 1, 1986

Honorable Joe Frank Harris
Governor of Georgia
State Capitol
Atlanta, Georgia 30334

Re: Ticket Fixing in the Georgia State Patrol

Dear Governor Harris:

The Law Department staff and I have carefully reviewed the enclosed report of the Georgia Bureau of Investigation (GBI) concerning its investigation of allegations of ticket fixing in the Georgia State Patrol (GSP). In this letter I will provide you with our legal analysis of the GBI's findings.

While the GBI report speaks for itself, I believe that it is clear from the report that there is widespread ticket fixing in the GSP and that ticket fixing is often done in response to pressure from high GSP officials and others. Moreover, there is a strong inference that there is ticket fixing in return for favors. These factual conclusions have important legal ramifications.

Although ticket fixing in many of the forms found by the GBI to exist is a felony under O.C.G.A. Section 45-11-11, I do not believe that criminal prosecutions are appropriate. First, there is simply too much of it to deal with appropriately through criminal prosecutions. Second, many of the individuals who would be witnesses in criminal prosecution have possibly been compromised because of conflicting statements made in the GSP internal investigation. Third, no single incident of ticket fixing, though it might technically be a crime, would in my judgment warrant prosecuton. Fourth, a great deal of potentially relevant evidence has been destroyed. It is worthy of note that the recent destruction of records by the GSP highlighted on Page 31

of the GBI report is directly contrary to express, written advice given to the GSP by this office on April 23, 1986.

One aspect of the GBI's findings concerning ticket fixing does, however, merit special attention. There is a strong, if not inescapable, inference from the GBI's findings that favors from Callaway Gardens for certain GSP supervisory personnel, to include Colonel Hugh Hardison, have been given in return for a general immunity by the GSP for Callaway Gardens personnel and their family members from prosecution for traffic offense. This situation could very well involve violations of the federal Hobbs Act, which in general makes the receiving of favors because of one's official position a felony. This matter

should be referred to the United States Attorney for the Middle District of Georgia for his consideration.

On the basis of the GBI report, I strongly recommend that immediate administrative action be taken to halt the ticket fixing practices prevalent in the GSP. Because these practices often violate the felony provisions of O.C.G.A. Section 45-11-1, they cannot be tolerated in any law enforcement agency. Second, when pressure and coercion in relation to personnel actions are used to cause tickets to be fixed, all GSP supervisory personnel as well as Board of Public Safety members who are aware of such conduct incur substantial civil liability risks for violations of the pressured or coerced employee's rights.

Whatever administrative actions you and the Board of Public Safety determine to be appropriate to stop the practices found to exist, at a bare minimum I recommend the following:

1. Adoption of a policy to prohibit ticket fixing with the requirement for a detailed monthly report to the board of Public Safety of all tickets voided or altered by the GSP; and

2. Adoption of a policy requiring Board approval until further notice for the initiation by the GSP of any promotions or adverse personnel actions. This is to prevent retaliation against those who have cooperated during this investigaiton.

Additionally, there is the matter of Colonel Hardison's purchase of a 1985 Ford LTD. The nub of this matter is that the purchase was for approximately $1500.00 less than it otherwise would have been because of the false report of the mileage on the automobile, 28,143 versus no more than 528. There is a strong inference that the false report was at least partially the result of Colonel Hardison's actions, but the evidence is not conclusive. I believe that it is fair to say that there exists probable cause to believe that a crime, theft by taking, occurred but that proof of such crime beyond a reasonable doubt is problematic; therefore, I do not reommend prosecution for this matter at this time.

Finally, notwithstanding the GBI's findings and this analysis, I am convinced that the overwhelming majority of GSP personnel are honest and committed to what is right. The crux of the problem at this time is a failure of leadership in the GSP. It is not for me as Attorney General to say who should lead the GSP, but I cannot fail to recommend immediate remedial action concerning how it is led. Otherwise, despite administrative measures and even legal action, the situation will not likely change. I do not recommend further investigation of the allegations of ticket fixing. In all likelihood, the GBI would simply be finding more of the same, and this would tell us no more than we already know. Most importantly, cumulative evidence concerning the practice of ticket fixing is not required

to achieve the primary goal which we must now achieve, namely, to halt the paractice as soon as possible.

I am prepared at your convenience to discuss this matter in greater detail.

Sincerely yours,

/s/ Michael J. Bowers
MICHAEL J. BOWERS
Attorney General

MJB:lc

Enclosures

cc: Mr. James R. Hamrick
Director, GBI